

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS
IN CLERKS OFFICE

Joseph E. Blake,
Plaintiff,

v.

Robert Murphy,
Kathleen Dennehy,
Massachusetts Department of Corrections,
Defendant.

2005 MAR 8 CIVIL ACTION NUMBER:

05-10508 RGS
U.S. DISTRICT COURT
DISTRICT OF MASS

Referred to Ch MJ MB Boulton

COMPLAINT

INTRODUCTION

1. The plaintiff, Joseph E. Blake, is being detained at the Nemasket Correctional Center by the defendants, Robert Murphy the Superintendent of the Nemasket Correctional Center and Kathleen Dennehy the commissioner of the Massachusetts Department of Corrections. The plaintiff has not been committed as a Sexually Dangerous Person pursuant to M.G.L. c. 123A, but is instead awaiting a decision from the trial court judge, while being detained at the Nemasket Correctional Center pursuant to § 14 (a) and (e). The plaintiff has been held prisoner at this facility in excess of two (2) years. The defendants are violating the plaintiff's rights under the Fourteenth Amendment of the United States Constitution by holding him in conditions more restrictive than the prison to which he was sentenced by the criminal court. The defendants are also violating the plaintiff's civil rights by failing to follow their promulgated regulations as well as the statutes and laws of the Commonwealth of Massachusetts. The plaintiff brings this action for damages and injunctive relief for violations of his civil rights pursuant to 42 U.S.C., §1983.

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19. At the Nemasket Correctional Center, the law library is combined in one single room with the general library. This limits the total number of people who can access the library, both law and general, to 25 at any given time. This was not the case at NCCI Gardner where the law library alone exceeded the square footage of the entire library space at the Nemasket Correctional Center. Said space is inadequate to house both the law and general libraries.

20. At NCCI Gardner, Blake could obtain copies of relevant legal cases and pleadings as well as make copies of such materials to share with other prisoners. At the NEMasket Correctional Center the Superintendent and librarian refuse to allow the law library to copy anything other than a prisoner's own original legal work. Blake is unable to get copies of grievances or personal and official correspondences.

21. At NCCI Gardner, Blake had access to the yard up to 49 hours per week. At the Nemasket Correctional Center Blake has access to the yard up to 18.5 hours per week. (Both figures are the maximum numbers of hours on days when daylight is the longest).

22. The yards (2) at NCCI Gardner held a combined total of 2 running tracks, a softball field, 3 basketball courts, 3 horseshoe pits, 6 sets of various workout bars and a bocci pit. At Gardner there are numerous benches to sit on and read at, there are picnic tables for prisoners to play games at. At the Nemasket Correctional Center there are no benches, Bleachers or picnic tables in the yard and prisoners are prohibited from bringing books papers or games to the yard.

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bike and prisoners are not allowed to bring radios, walkmans or any games to the gym.

27. At the Nemasket Correction Center, there are 5 pages of detailed rules for visitors and prisoners. If a visitor arrives after the scheduled movement has been completed, the visitor will be made to wait up to 50 minutes before the prisoner is allowed to go to the visiting room. At N.C.C.I. Gardner prisoners are allowed to go to the visiting room immediately upon the arrival of thier visitor.

28. At the Nemasket Correctional Center all prisoners, including Blake, are required to be strip searched after every visit including those from attorneys, doctors, and other professionals. In these searches Blake is forced, by more than one officer, to lift his penis and testicles for inspection; run his fingers through his hair, then run his fingers inside his mouth and finally forced to bend over and spread his buttocks with his hands. All of these are strip search tactics applied to the highest security criminals housed by the D.O.C.

29. Blake is restricted to purchasing the same food, clothing and appliances at the Nemasket Correctional Center as all inmates at level 4 prisons can buy. This despite the fact that various companies provide a wide variety of clothing and appliances suitable for secure facilities. At M.C.I. Norfolk, a comparable level 4 facility, prisoners can purchase hamburger, chicken, onions, peppers, garlic, oranges, bananas, apples, pancake mix, flour, crisco oil, and four flavors of Ben & Jerry's Ice cream. These items are not available to residents of the Nemasket Correctional Center, despite the fact that a variety

of grocery suppliers provide delivery service.

30. At N.C.C.I. Gardner, Blake was not limited to the frequency at which he was allowed to order clothing and appliances. At the Nemasket Correctional Center Blake is restricted to making one order per 90 day period for clothing and/or appliances.

31. The Nemasket Correctional Center has previously allowed food, clothing and appliances to be sent into the facility from outside vendors and family members without jeopardizing the mission of the D.O.C. or the security of its personnel.

32. At N.C.C.I. Gardner there was a substantial number of prisoners (40), including Blake, working in prison industries where they could earn up to \$65.00 per week. At the Nemasket Correctional Center there are only 15 industries job slots which earn a minimum of \$2.00 per day. The prisoners at the Nemasket Correctional Center remain "slaves of the state," a sobriquet generally reserved for prisoners doing time for a criminal offense.

33. In the past prisoners could supplement their limited incomes by producing craft items in their cells or by constructing wood products, in the Nemasket Correctional Centers wood shop for sale to employees, family members or friends. Though the Nemasket Correctional Center maintains an operating wood shop it is limited to production of items for D.O.C. employees only and residents can no longer enjoy a financial profit from their work, nor can they engage in craft work for outside sale.

34. At N.C.C.I. Gardner Blake was able to participate in college credit computer courses; other programs available included welding, small engine repair, horticulture, food service and barber school. At the Nemasket Correctional Center there are no education programs beyond the G.E.D. programs.

35. At the Nemasket Correctional Center there is a so called "computer lab" to which access is severely limited. At best Blake could secure a 30 minute time slot once per week. The access time would be further reduced from 30 minutes by the amount of time it takes to reach the lab area, stand in line to be subjected to a pat search, sign into the lab and log onto an archaic computer system, all of which reduces useable computer time to 10 - 15 minutes per week. This is contingent upon Blake's ability to secure a time slot which are assigned on a first come first serve basis with civil detainees being the last to be assigned access. If Blake attempts to do legal work on these computers he will lose what little taccess he may have.

36. On knowledge and belief other state hospitals' allow limited access to the internet to access information, just "surf the net", or to do legal research. None of these activities are available to Blake at the Nemasket Correctional Center.

37. At N.C.C.I. Gardner Blake had access to a word processor and typewriters with both memory and spell check. Prisoners who were housed at the Nemasket Correctional Center prior to 1997 are still allowed to keep personal computers and printers in their cells while all new detainees and prisoners are limited to using a plain electric typewriter without spell check or memory. Requests to the Superintendent for the purchase

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of computers by prisoners, are currently going unanswered or being denied.

38. At N.C.C.I. Gardner all of the showers used by Blake had standard shower controls which allowed Blake to adjust the water temperature and keep the water running for the entire length of the shower. At the Nemasket Correctional Center all showers have a push button control which leaves the water, at best, tepid and on for only 15 - 20 seconds at a time.

39. At N.C.C.I. Gardner Blake could freely exchange newspapers and magazines with other prisoners. At the Nemasket Correctional Center Blake is subject to disciplinary action for doing so.

40. At N.C.C.I. Gardner the chow hall was large enough to accomodate the inmate population and allowed sufficient time to eat the meal. At the Nemasket Correctional Center there are not wenough tables to seat even a small portion of the population, at it's current level, a level that continues to increase. The prisoners are herded through the chow hall, euphemistically refered to as the Inmate Dinning Room (IDR), that doesn't allow the minimum allotted 20 minutes for prisoners to eat. Blake and other prisoners are frequently forced to stand and consume a portion of their meals because there are no available seats, which in turn causes the guards to begin yelling for the prisoners to move out even quicker.

41. The three week cycle of food served at the Nemasket Correctional Center is the same menue that is served at all other prisons operated by the D.O.C.

42. The food, if prepared in the manner prescribed by the D.O.C. nutritionist in the food service manual (issued

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twice annually) purports to be nutritious yet it fails to take into account the new nutritional values provided by the USDA.

43. The preparation of the food, at best, is indifferent at worst atrocious and unpalatable, frequently further denies Blake a proper daily nutritional intake. The majority of the menu is prepared off site at the D.O.C. "warehouse" and trucked into the facility, leaving no accountability for mistakes in preparation, or drastic deviation from the recipes created by the D.O.C. nutritionist. Portions are frequently incorrect in size and are excessively high in carbohydrates. Meals are served at temperatures below the safe levels which the Centers for Disease Control has identified as a common factor responsible for food borne illness. The temperatures are also not compliant with the state codes promulgated by the Department of Public Health which govern the temperatures at which food is to be served, as covered in the minimum standards for food establishments.

44. Superintendent Murphy has treated complaints about food related issues with complete indifference and these problems continue to recur.

45. The regulations and restrictions that apply to criminals, whose conditions of confinement are designed to punish are applied to Blake despite the findings of Youngberg v. Romeo, 457 U.S. 307 (1982), which entitle more considerate treatment and conditions of confinement than that afforded criminals whose confinement is designed to punish. It has been Blakes experience that these regulations and restrictions, set out in Title 103 of the Code of Massachusetts Regulations, are more zealously enforced at the Nemaskeet Correctional Center than

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at other prison facilities Blake has been confined to.

46. At N.C.C.I. Gardner, as well as other prisons, there is some form of council which is, at least to a limited extent, allowed to advocate on behalf of prisoners, with the prison administration, other comparable facilities also have "lifers" groups. No such groups exist at the Nemasket Correctional Center.

47. At the Nemasket Correctional Center all "new" (post 1997) prisoners, including Blake, are not allowed to purchase reading lamps. As a prisoner at N.C.C.I. Gardner, Blake, if assigned to a two-man cell, would have had a reading lamp issued as part of the cell furniture. Prisoners at the Nemasket Correctional Center since prior to 1997, who had lamps are allowed to keep them. The cells at the Nemasket Correctional Center are lit by a single two bulb, four foot, fluorescent fixture mounted in the center of the ceiling in a position that causes the top bunk to completely block the light from the bottom bunk despite Toussaint v. McCarthy, 597 F.Supp. 1388, 1409 (N.D.Cal. 1984) ("[E]ach inmate must be afforded sufficient light to permit him to read comfortably while seated or lying on his bunk.") In addition, if the prisoner is housed in the top bunk, he has the light glaring into his eyes from less than three feet away. The existing lighting was not designed for the installation of bunk beds and is inadequate on the bottom bunk and overwhelming on the top bunk.

48. At N.C.C.I. Gardner, Blake, a member of the Native American Spiritual Awareness Council (N.A.S.A.C.), had access to the 15' x 30' space provided for N.A.S.A.C. religious use

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mornings, afternoons, and evenings 7 days per week. Blake had access to corporate worship items ie: the sacred pipe, drum, smudge, rattle sage, sweet grass, cedar, music CDs, access to extensive written documentation, teachings of Native American lore and religious practices. In addition the N.A.S.A.C. circle at N.C.C.I. Gardner was in the process of obtaining, and has since obtained, the materials necessary to construct a purification "sweat" lodge. Which they are currently allowed to use on a regular basis. These items were all all provided by the institution out of programs and treatment funds. These sacred items were available to Blake anytime that Blake had access to the religious space provided by Gardner. Also contained within this space was an extensive resource and book library of Native American material. On Solstices and Equinoxes, both Native American observances, members of the N.A.S.A.C. circle were allowed to provide canteen and garden items to supplement the jerky, squash, corn, and lima beans provided by the D.O.C. which brought these feast days more into line with Native American tradition. For these 4 annual observances N.A.S.A.C. would meet for all 3 movements of the day, or, for in excess of 7 hours. At the Nemasket Correctional Center a 10' x 10' room is provided for → a maximum of 90 minutes twicw per week, there are fewer items for corporate worship and those items are only sporadically available. There are no resources or books, and a 2½ cubic foot storage locker is the only area provided for the storage of the sacred items for multiple groups.

49. At N.C.C.I. Gardner Blake was allowed at least a modicum of dignity during mandatory urinalysises in that he

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was able to remain fully clothed while urinating into a cup. At the Nemasket Correctional Center Blake and other prisoners are required to strip naked prior to giving a specimen.

COUNT II - FAILURE TO PROVIDE THE MINIMAL
CIVILIZED MEASURE OF LIFE'S NECESSITIES.

50. The Massachusetts Department of Public Health has promulgated regulations which prescribe mandatory minimum standards of fitness for human habitation at 105 CMR 410. These are "a minimal civilized measure of life's necessities and apply to all dwelling units, unless otherwise provided for in the code. Correctional facilities operated by the D.O.C. are not subject to 105 CMR 410, but are subject to 105 CMR 451. The Supreme Judicial Court has recently reaffirmed that the Nemasket Correctional Center is a "secure mental health facility" not a "correctional facility". Commonwealth v. Knapp, 441 Mass. 157, 168, 804 N.E.2d 885, 894 (2004), citing Doe v. Gaughan, 808 F.2d 871, 879 (1st Cir. 1986)

51. 105 CMR 410 provides that:

410.440 Minimum Square Footage

(A) Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant, and at least 100 square feet of floor space for each additional occupant the floor space to be calculated on the basis of total habitable room area.

(B) In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

(C) In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet per occupant.

52. The minimum health and sanitation standards for Correctional Facilities regarding room size are recommended standards and are not mandatory. 105 CMR 451.011 and 105 CMR 451.012 The recommended standards for room size in a Correctional Facility are:

451.320 Cell Size: Existing Facilities

Each cell or sleeping area in an existing facility should contain at least 60 square feet of floor space for each occupant, calculated on the basis of total habitable room area, which does not include areas where floor to ceiling height is less than eight (8) feet.

451.321 Cell Size in a New or Renovated Facilities

Each cell in a new facility or a part of a facility constructed after the effective date of 105 CMR 451.000 should contain:

(A) For segregation and special management area where inmates are usually locked in for greater than ten (10) hours per day, at least 80 square feet of floor space for a single inmate.

→ (B) For inmates usually locked in for less than ten (10) hours per day, contain at least 70 square feet of floor space for a single inmate. Provide, however, two inmates may occupy a room or cell designed for double occupancy which has a floor space of 120 square feet.

53. The cells at the Nemasket Correction Center contain 80 square feet of total floor space. If one deducts the areas where the floor to ceiling height is less than eight (8) feet due to permanently attached bunkbeds, desk, toilet and wash basin, there is 57 square feet of floor space in each cell at the Nemasket Correctional Center where prisoners are secured in excess of ten (10) hours per day.

→ 54. 105 CMR 451.112 provides that:

Each inmate and each employee shall have access to a toilet and handwashing sink at all times.

55. Blake and all other prisoners at the Nemasket Correctional Center have no access to a toilet when they are

in the yard. Blake has experienced extreme discomfort as a result of the lack of toilet access. Other prisoners simply relieve themselves against the fence.

56. Over five years ago the court in King v. Greenblatt, 53 F. Supp. 2d 117, 134, (D. Mass. 1999) noted:

To be sure, there are issues in the day to day management of the Treatment Center. Funds are being sought from capital planning funds to install toilet facilities accessible to the yard to attempt to address the resident's complaint about lack of toilet facilities in the yard.

COUNT III - TELEPHONES

57. At the Nemasket Correctional Center, as well as all other Correctional Facilities run by the DOC, all telephone calls made by Blake and all other prisoners are subject to monitoring and recording. A recorded announcement interrupts the call approximately every 8-10 minutes to announce that "this call is from a Correctional Facility and is subject to monitoring and recording." Blake is limited to a pre-authorized list of 15 phone numbers; 5 attorney numbers and 10 other persons to whom calls can be made. Blake may only update his pre-approved phone list once every three (3) months.

58. All phone calls made by Blake and all other prisoners at the Nemasket Correctional Center must be made collect using a carrier under contract with the DOC eliminating his ability to contact his Grandmother, a major influence in his upbringing.

59. The rates charged by the carrier under contract to the DOC are substantially more expensive than those paid by the general public, particularly compared to rates charged when using pre-paid phone cards.

60. For each call Blake makes to family members, none of which are within the state of Massachusetts, the cost of

the call is \$3.95 for the first minute and \$.69 for each additional minute using the DOC carrier. The calls are further limited to 30 minutes requiring that the \$3.69 cost of the first minute be paid each time the 30 minute limit expires.

61. Under the contract with the carrier and regulations of the DOC the carrier pays a commission on telephone tolls paid by Blake and all other prisoners directly to the General Funds of the Commonwealth of Massachusetts. 103 CMR 482.07 (6).

62. There is no authorization in the General Laws of Massachusetts for a commission to be charged to prisoners for collect phone calls and to be paid into the General Fund.

63. Limiting the number of persons Blake may call, the duration of those calls, not allowing the use of custom calling features and the monitoring and recording of those calls is more restrictive than justified by any compelling government interest.

64. In July 2003 the D.O.C. changed carriers for prisoner phone calls. The new carrier will not allow collect phone calls from Blake and other prisoners to a number of other carriers including the carrier used by Blake's Grandmother, thereby denying Blake telephone contact with a key member of his support structure.

65. On information and belief other state hospitals allow their residents to possess cellular phones. No such option is available to Blake at the Nemasket Correctional Center.

COUNT IV - CLASSIFICATION

66. Prior to being imprisoned at the Nemasket Correctional Center Blake received a point based score under the defendants classification system, which would have classified Blake to be placed in a minimum security prison. However, the defendants have arbitrarily determined that no sex offenders shall be placed at a minimum security prison or work release program.

67. The Nemasket Correctional Center is the sole institution for persons imprisoned under M.G.L.c. 123A, "and therefore it must encompass all levels of security within one facility." King v. Greenblatt, supra at 28. Though Blake is imprisoned at the Nemasket Correctional Center in a civil detainee status and not as a committed person he is subject to the same high security procedures as apply to other prisoners who have long histories of escape, violence, murder and rape, including rape while in prison or the Nemasket Correctional Center.

68. Blake has no history of violence in or out of prison and has never attempted to escape. Blake appeared at his → M.G.L.c. 123A trial without handcuffs guarded often by a single unarmed court officer, yet whenever moved outside the Nemasket Correctional Center by the D.O.C. Blake is subject to the use of handcuffs, leg irons and belly chains all while being escorted by heavily armed D.O.C. employees. In addition at the beginning and end of each trip Blake is forced, with the threat of physical violence, to, in the presence of one or more officers, strip completely naked, forced to lift his penis and testicles for

75. Blake has frequently been subjected to further delays by the issuance of ten (10) day extensions by the grievance officer, in total disregard for the fact that 103 CMR 491.18 only allows ten day extensions to be granted by the Superintendent.

76. Blake has on few occasions had the grievance process decided in his favor only to have that decision totally ignored by the defendants.

77. Blake has brought this to the attention of Edington and the Superintendent at staff access.

78. The defendants have taken no action to rectify the non-compliance with grievance decisions issues, even though specifically asked by Blake.

COUNT VI - VIOLATION OF THE AMERICANS WITH DISABILITIES ACT AND
THE REHABILITATION ACT 1973

79. Blake has been diagnosed as having a mental impairment that substantially limits one or more of the major life activities by requiring that he be confined to a secure mental treatment facility.

80. The DOC and/or the Massachusetts Executive Office of Public Safety receive federal financial assistance.

81. The defendants have denied Blake and all other civilly detained and/or committed inmates the benefits and subjected Blake to discrimination solely by reason of his disability.

82. The defendants have failed to provide Blake with programs and services in the most integrated setting appropriate to his needs.

Causes of Action

83. The defendants have violated Blake's rights to

CAUSES OF ACTION

83. The defendants have violated Blake's rights to substantive due process of law under the Fourteenth Amendment to the United States Constitution, and his rights under M.G.L.c. 123A § 6(a), by holding Blake in conditions of confinement which far exceed the least restrictive alternative and which are subsequently more restrictive than the punitive conditions of confinement under which Blake was held while still serving his prison sentence. Blake is entitled to damages and injunctive relief against the defendants pursuant to 42 U.S.C. 1983 and declaratory and injunctive relief pursuant to M.G.L.c. 231A.

84. The Nemasket Correctional Center is a "secure mental health facility not a correctional facility" as the Massachusetts Supreme Judicial Court has ruled in Commonwealth v. Knapp, 441 Mass. 157, 168 (2004), then the minimum standards of fitness for human habitation set out in 105 CMR 410 apply, and Blake is entitled to injunctive relief to enforce the minimum standards of human habitation as provided by M.G.L.c. 111, §127A, et seq.

85. Blake and all other persons imprisoned at the Nemasket Correctional Center are entitled to damages and injunctive relief because the defendants have failed to provide the minimal civilized measure of life's necessities under either 105 CMR 410, et seq. or 105 CMR 451, et seq. The State Sanitary Code's Minimum Standards of Fitness for Human Habitation.

86. The failure to apply 105 CMR 410, Minimum Standards of Fitness for Human Habitation violates the right of Blake and all other persons imprisoned at the Nemasket Correctional Center to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and

entitles Blake to damages and injunctive relief pursuant to 42 U.S.C. § 1983.

87. As applied to Blake and all other persons imprisoned at the Nemasket Correctional Center, M.G.L.c. 123A violates Blake's rights to substantive due process. As applied the statute is not narrowly tailored to further a legitimate and compelling governmental interest. The conditions of confinement at the Nemasket Correctional Center are indistinguishable, and in many cases more punitive than those of prison. By design the defendants have mandated that the same regulations apply to both the Nemasket Correctional Center and all other prisons of the Department of Corrections. In practice the conditions of confinement at the Nemasket Correctional Center are substantially more restrictive than the prison in which Blake was held in prior to the start of M.G.L.c. 123A proceedings. Although the courts have ended conditions which were barbaric and inhumane at the Nemasket Correctional Center in the 1970's, the conditions of confinement still are no better than a poorly run prison. (see King v. Greenblatt, supra, for a description of the appalling conditions which existed at the Nemasket Correctional Center in the 1970's.) The defendants continue to ignore major components of prior court orders, including failing to implement a classification system and least restrictive non-punitive conditions of confinement. With the reenactment of civil commitment in September of 1999 and the resultant substantial influx of newly committed persons, the defendants have made no provisions for adequate space for the newly committed persons, and instead have willfully created a situation of

overcrowding in a facility that was already overcrowded by the defendants' decision to treat state inmates using the same facilities. There is neither the legislative, executive nor judicial will to implement true civil commitment. Instead what is called "civil commitment" is a chimerical as "seperate but equal" and is nothing more than extended punishment. Blake is entitled to damages and injunctive relief under 42 U.S.C. § 1983, because M.G.L.c. 123A is unconstitutional as applied to himself.

88. Blake is entitled to judicial review of the Superintendent and Edington's grievance decisions under M.G.L.c. 127, § 38(h), in accordance with the standards set out in M.G.L.c. 30A, § 14, because the decisions are:

- A) Not supported by substantial evidence,
- B) based on errors of law,
- C) made upon unlawful procedure,
- D) in excess of the statutory authority or jurisdiction of the D.O.C.,
- E) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law.

CLASS ACTION

89. The plaitiff class consists of all persons at the Nemasket Correctional Center who are:

- A) Civil detainees;
- B) Being held in conditions of confinement which far exceed least restrictive alternative;
- C) Being held in conditions which are far more punitive than prison;
- D) Housed in a secure Mental Health facility which does not meet the Minimum Standards of Fitness for Human Habitation;

E) Being subjected to "civil detainment" or "commitment" but as applied to the class is nothing more than an increase and continuation of the punishment for the crimes for which class members have completed their prison sentences; and

F) who are being charged an an unathorized fee for telephone services.

RELIEF

1. The court grant preliminary injunction enjoining the defendants from failing to immediately:

A) Impliment the least restrictive conditions of confinement necessary for the plaintiff, which shall not be any more restrictive than the conditions of confinement at NCCI Gardner or alternatively return the plaintiff to NCCI Gardner to be held under the same conditions of confinement under which he was held immediately prior to his transfer to the Nemansket Correctional Center.

B) Remove all restrictions on telephone calls made by the plaintiff and all other prisoners at the Nemansket Correctional Center, including the manner in which the plaintiff can pay for these calls.

D) Allow the plaintiff and other prisoners at the Nemansket Correctional Center to purchase and have a computer and a printer, and other appliances which do not pose an immediate threat to employees or residents, compact discs containing educational, legal research, and entertainment materials.

2. Grant the plaintiff and all other prisoners at the Nemansket Correctional Center damages in an amount equal to

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the unauthorized monetary exactions paid by the plaintiff as commissions on collect phone calls which have been paid to the General Fund of the Commonwealth.

3. Declair that M.G.L. c. 123A is unconstitutional as it is being applied to the plaintiff and all other prisoners confined at the Nemasket Correctional Center and order the immediate release of the plaintiff.

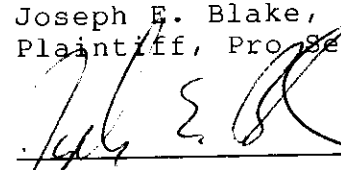
4. The court enjoin the defendants preliminarily and perminantly from subjecting the plaintiff and all other prisoners confined to the Nemasket Correctional Center to a grievance process that does not comply with M.G.L. c. 127, §38E.

5. Award the plaintiff damages, costs and reasonable attorneys fees for violation of his civil rights pursuant to 42 U.S.C. 1983.

6. Certify this action as a class action.

7. Grant further relief as justice and equity require.

Joseph E. Blake,
Plaintiff, Pro Se

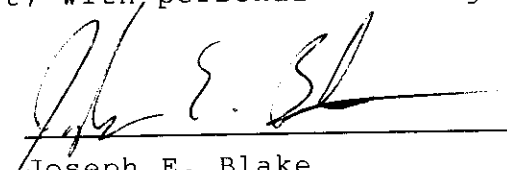


Joseph E. Blake, Pro Se
Mass Treatment Center
30 Administration Rd
Bridgewater, MA 02324

VERIFICATION

I, Joseph E. Blake, state under pains and penalties of purjury that I have made all the factual allegations in the foregoing complaint as true and correct, with personal knowledge and observation.

DATED: _____



Joseph E. Blake

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Joseph E. Blake

DEFENDANTS

Robert Murphy, et al.

05-10508 RGS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Pro Se

Unknown

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State PTF ☒ DEF ☒
Citizen of Another State PTF ☐ DEF ☐
Citizen or Subject of a Foreign Country PTF ☐ DEF ☐
Incorporated or Principal Place of Business in This State PTF ☐ DEF ☐
Incorporated and Principal Place of Business in Another State PTF ☐ DEF ☐
Foreign Nation PTF ☐ DEF ☐

IV. NATURE OF SUIT

CONTRACT

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability

TORTS

- PERSONAL INJURY**
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
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☐ 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
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☐ 380 Other Personal Property Damage
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- ☐ 610 Agriculture
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☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

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- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157
PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

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- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities/Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes
☐ 890 Other Statutory Actions

REAL PROPERTY

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☒ 443 Housing/Accommodations
☐ 444 Welfare
☐ 440 Other Civil Rights

PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS — Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Civil Action, claiming civil rights violation pursuant to 42 U.S.C., §1983 as well as violations of the plaintiff's rights under the 14th Amendment to the U.S. Constitution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

2-10-05

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERKS OFFICE
V.

2005 MAR -8 P 12:02

U.S. DISTRICT COURT
DISTRICT OF MASS.

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

ROBERT MURPHY, ET AL.JOSEPH E. BLAKE

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

05-10508 RGS

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME JOSEPH E. BLAKE, PRO SEADDRESS 30 ADMINISTRATION ROAD, BRIDGEWATER, PLYMOUTH CO., MASS.

TELEPHONE NO. _____